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Docket No. NG 2001.00

Certificate of Mailing/Transmission (37 C.F.R. § 1.8(a)).

☒ Pursuant to 37 C.F.R. § 1.8, I hereby certify that this paper and all enclosures are being deposited with the United States Postal Service as first class mail on the date indicated below in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

☐ Pursuant to 37 C.F.R. § 1.6(d), I hereby certify that this paper and all enclosures are being sent via facsimile on the date indicated below to the attention of Examiner _____ at Facsimile No. _____ at _____ a.m./p.m.

Dated: **October 22, 2003**

Name of Person Certifying: Peggy Nichols

Printed Name: Peggy Nichols

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Aaron G. FILLER

Assignee: NeuroGrafix

Filing Date: December 22, 2000

Examiner: Mary Cheung

Serial No.: 09/746,429

Group Art Unit: 3621

Title: SYSTEM, METHOD AND ARTICLE OF MANUFACTURE FOR MANAGING A MEDICAL SERVICES NETWORK

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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OCT 29 2003

GROUP 3600

RESPONSE TO RESTRICTION REQUIREMENT UNDER 35 U.S.C. § 121

Dear Sir:

On September 22, 2003, a Requirement for Restriction under 35 U.S.C. § 121 was issued by the U.S. Patent and Trademark Office in connection with the above-identified application. A response is due by October 22, 2003. Accordingly this response is timely filed.

Requirement For Restriction Under 35 U.S.C. § 121

In the restriction issued September 22, 2003, the pending claims were alleged to describe the following independent and district inventions:

- I. Claims 1-63, drawn to a method for managing network medical services, classified in class 705, subclass 2-4; and
- II. Claims 64-90 drawn to a computer based patient medical record system, classified

in class 345, subclass 156, 619, 650, 676, 808, 862.

The Office alleged that the inventions are distinct, each from the other because of the following reasons. Inventions I and II are related as sub-combinations disclosed as usable together in a single combination. The sub-combinations are distinct from each other if they are shown to be separately usable. In the instant case, the Office alleged that Group I has a separate utility such as a medical services network for receiving, transmitting and interpreting diagnostic data. Invention II has separate utility such as manipulating user's image files.

The Office alleged that because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, and because the search required for Groups I and II are not coextensive, restriction for examination purposes as indicated is proper.

Election of Group II, Claims 64 to 90

Applicant's undersigned attorney, on behalf of Applicant, elects Group II, claims 64-90, with traverse. Applicant expressly reserves his right under 35 U.S.C. § 121 to file one or more divisional applications directed to the nonelected subject matter during the pendency of this application, or an application claiming the benefit of this application under 35 U.S.C. § 120.

Applicant traverses the requirement for restriction and requests the Office to reconsider and withdraw the restriction requirement between the inventions of Groups I-II, claims 1-90. There are two criteria for a proper requirement for restriction, namely, (1) the inventions must be independent or distinct, and (2) there must be a serious burden on the Examiner if restriction is not required. Under M.P.E.P. § 808, the Examiner must examine the subject application on the merits even though it includes claims to distinct inventions, if the search and examination of the application can be made without serious burden.

Applicant notes that it would not be a serious burden on the Examiner to search the inventions of Groups I and II together as each invention requires the use of the process of a data collection system. The use of a data collection system also provides the relationship between Groups I and II.

Accordingly, in view of the preceding discussion, Applicant respectfully asserts that two or more independent and distinct inventions have not been claimed in the subject application

between the inventions of Groups I and II. Therefore, restriction is not proper under 35 U.S.C. § 121 and withdrawal of this restriction is respectfully requested.

CONCLUSION

No additional fee is deemed necessary in connection with the filing of this Response. However, if the Patent Office determines that an extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 50-2518**, referencing billing number **2023953-7009802001**. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Should a telephone advance prosecution of the subject application, the Examiner is invited to contact the undersigned at (650) 849-4950.

DATE: Oct. 22, 2003

Respectfully submitted,

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3621



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U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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TRANSMITTAL FORM <i>(to be used for all correspondence after initial filing)</i>		Application Number	09/746,429
		Filing Date	December 22, 2000
		First Named Inventor	Aaron G. Filler
		Art Unit	3621
		Examiner Name	Mary Cheung
Total Number of Pages in This Submission	4	Attorney Docket Number	NG 2001.00

ENCLOSURES (check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input checked="" type="checkbox"/> Amendment / Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): <p style="text-align: center;">Return Receipt Postcard</p>
Remarks		<div style="text-align: right;"> RECEIVED OCT 29 2003 GROUP 3600 </div>

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT	
Firm or Individual name	Antoinette F. Konski Bingham McCutchen LLP
Signature	<i>Antoinette F. Konski</i>
Date	<i>Oct. 22, 2003</i>

CERTIFICATE OF MAILING			
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Typed or printed name	Peggy Nichols		
Signature	<i>Peggy Nichols</i>	Date	October 22, 2003

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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